

Alaska Eskimo Whaling Commission

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August 23, 2004

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FAX: 907-563-0439

Re: Draft Amended Integrated Activity Plan/Environmental Impact Statement for the
Northeast National Petroleum Reserve-Alaska

Dear Director Bisson:

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The Alaska Eskimo Whaling Commission (AEWC) appreciates this opportunity to provide written comments on the Bureau of Land Management's Draft Amended Integrated Activity Plan/Environmental Impact Statement (DEIS) for the Northeast National Petroleum Reserve-Alaska (NPRA).

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In addition, the AEWC would like to request the opportunity to meet with you in person in the near future to discuss the issues raised in these comments, especially those pertaining to adverse impacts to bowhead whales and the bowhead whale subsistence hunt.

If you have any questions, please call my office.

Sincerely,



Maggie Ahmaogak

CC: Mayor George Ahmaogak
Senator Ted Stevens
Senator Lisa Murkowski
Congressman Don Young

**COMMENTS
OF THE
ALASKA ESKIMO WHALING COMMISSION
ON THE
NORTHEAST NATIONAL PETROLEUM RESERVE – ALASKA
DRAFT AMENDED INTEGRATED ACTIVITY PLAN/
ENVIRONMENTAL IMPACT STATEMENT**

August 23, 2004

INTRODUCTION

003
Timing

A decision to open the Northeast National Petroleum Reserve – Alaska (NPRA) to additional leasing would be unreasonably premature at this time. The Bureau of Land Management (BLM) and its NPRA stakeholders have not had the opportunity to develop, implement, and evaluate the effectiveness of the mitigation measures developed in 1998 to support the extensive leasing plan developed for the Northeast NPRA at that time.

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As a general proposition, Congress, in the Federal Land Preservation and Management Act, has directed BLM to foster “multiple use and sustained yield” on the nation’s public lands. With respect to development on public lands used for subsistence, like those of the North Slope, a narrower and more specific directive was created. With the enactment of the Alaska National Interest Land Conservation Act (ANILCA), Congress specifically recognized the fragile and opportunistic nature of the subsistence lifestyle so vital to North Slope Native culture,

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The continuation of the opportunity for subsistence uses by rural residents of Alaska . . . is essential to Native physical, economic, traditional, and cultural existence.

The situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses.

16 USC 3111 (1),(2), emphasis supplied.

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Thus, Congress recognizes that for the vast majority of North Slope Natives, there is no other source of food and essential supplies to replace those obtained from subsistence hunting. If BLM fails in its duty to create a regulatory framework that enables oil and gas development to go forward without damage to subsistence uses, people of the North Slope will be forced to leave their homes and resort to welfare or face starvation. The history of interaction between “western” or industrialized cultures and aboriginal

subsistence cultures is a grim reminder of the common fate of the Native peoples who in the past have faced a situation such as the one faced by North Slope Natives today. Just as people can die, so can communities and cultures. Aboriginal subsistence communities do not survive the loss of their subsistence resources.

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Congress has recognized the gravity of the risk here, and has tasked BLM with the protection and preservation of North Slope subsistence resources and uses even as it leases portions of the North Slope for oil and gas development. Certainly Congress has set BLM a daunting task in directing the agency to foster the co-existence of subsistence uses and oil and gas development in the NPRA. However, the task is not insurmountable and Congress has provided BLM with high quality, science based guidance in the 2003 Report of the National Research Council Committee on Cumulative Environmental Effects of Oil and Gas Activities on Alaska's North Slope, the National Academies Press, Washington, D.C. Following the recommendations of this Report should enable BLM to meet its statutory obligations as set forth in ANILCA and FLPMA. Failure to follow the recommendations will create substantial risk of failure in meeting those and other legal and regulatory obligations.

SUMMARY

008
Alternatives

The analysis in the current Draft Environmental Impact Statement (DEIS) does not support the opening of new areas of the Northeast NPRA to oil and gas leasing. Rather, the DEIS supports the adoption, by BLM, of "Alternative A", its "no action" alternative. Federal law requires that the substantial impacts to wildlife, habitat, and subsistence uses threatened by the present level of leasing (the "no action" alternative) must be mitigated to an extent that enables the North Slope subsistence communities to continue their subsistence lifestyle. With the 1998 Decision to open the Northeast NPRA to oil and gas leasing, BLM developed an extensive catalogue of mitigation measures. The effectiveness of these measures in protecting North Slope subsistence in the face of the level of development contemplated under the 1998 Decision has not been proven. Therefore, expanded leasing cannot be supported.

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Marine
Mammals

Furthermore, the 1998 mitigation measures do not address the likely and potentially extensive impacts to bowhead whales, the bowhead migration, and the Alaskan Eskimo bowhead whale subsistence hunt from oil and gas leasing under the 1998 Decision. Barge traffic associated with NPRA development has already been identified as a potential factor leading to an apparent deflection of the 2003 fall bowhead whale migration at Barrow. With warmer winters and the retreating ice pack, the fall bowhead migration is occurring closer to shore than has been observed in years of heavy ice cover. Thus, as work continues to ramp up on the NPRA, bowheads are increasingly likely to encounter NPRA-related boat traffic during their fall migration. In the absence of adequate mitigation, these encounters threaten the whales and the bowhead subsistence hunt.

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Finally, Congress has provided BLM with guidance concerning the need for a comprehensive program of planning and research to be undertaken in cooperation with other federal, state, and local agencies to provide the information and coordination necessary for management of the NPRA consistent with Federal law.

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In light of the above, a decision by BLM to open additional areas of the Northeast NPRA to oil and gas leasing would be premature at this time, in violation of BLM's obligations under ANILCA, FLPMA, Executive Order 12898, and potentially the Endangered Species Act.

I. THE DEIS COMPELS THE ADOPTION OF "ALTERNATIVE A" AND THE EXPANSION OF MITIGATION MEASURES UNDER THAT ALTERNATIVE

A. BLM Cannot Open Additional Areas of the Northeast NPRA to Oil and Gas Leasing Until It Determines Whether the Mitigation Measures Developed In 1998 Provide Required Protections.

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In its 1998 decision regarding the Northeast NPRA, BLM opened almost 90 percent of the Northeast NPRA to development, creating an extensive and, from the perspective of our subsistence communities, a very high risk experiment in the 'multiple use' management of two potentially mutually exclusive activities – subsistence and oil and gas development. In January of this year, virtually the entire Northwest NPRA was similarly opened, adding almost 9 million acres to the 4 million acres already opened under the 1998 decision. With these two decisions, BLM has opened the overwhelming majority of our North Slope communities' traditional onshore subsistence hunting areas to oil and gas leasing.

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Our communities support onshore oil and gas development, if it is done properly. Furthermore, based on our experience with oil and gas development in the OCS, we are confident that onshore development, if done properly, can co-exist with our traditional subsistence lifestyle. Moreover, as discussed later in these comments, it is precisely this type of co-existence that Congress has directed the Department of the Interior to foster on public lands through BLM's congressionally mandated management of those lands on the basis of "multiple use and sustained yield" 43 U.S.C. 1701(a)(7) (2003).

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In the 1998 Integrated Activity Plan/Environmental Impact Statement (IAP/EIS) for the Northeast NPRA, BLM reviewed numerous impacts to North Slope subsistence resources and activities expected to occur as a result of oil and gas development under what, in the current action, is referred to as "Alternative A" or the "no action" alternative. These impacts are broad in scope – geographically, across resources, and through time. In a best case scenario, they will result in long term (in some cases effectively permanent) alterations to the distribution of terrestrial wildlife, with likely reductions in the size of some of these populations. They will bring about permanent changes –

physical, economic, social, and cultural – to our subsistence communities, in addition to the drastic changes that our communities have experienced in the past half century.

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Because of the broad scope of the environmental and social impacts contemplated under Alternative A and recognizing the central role of subsistence to the survival of our communities, the BLM, in 1998, adopted an extensive catalogue of restrictions and stipulations, including numerous measures intended specifically to mitigate anticipated adverse impacts to subsistence resources and uses. In particular, the critical caribou calving and hunting areas around Teshekpuk Lake were closed to leasing and other important waterfowl and caribou habitat were protected. Of equal importance, BLM included in its Stipulations for the 1988 Record of Decision (ROD, Decision) requirements for consultation and the development of conflict avoidance agreements. In the AEWC's view these mitigation measures offer a very promising approach to reducing conflicts between subsistence activities and oil and gas development in the NPRA, and the AEWC supports their inclusion in the 1998 ROD Stipulations.

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However, at this time, exploration under the 1998 plan has barely begun. Neither our communities, nor the industry, nor BLM have had an opportunity to determine whether the restrictions, stipulations, and mitigation measures developed for the 1998 Plan will prove to be effective in allowing the "multiple use" of the NPRA that BLM is tasked with fostering. Draft Environmental Impact Statement (DEIS) Section 4.3.13.3 "Effectiveness of Stipulations and Required Operating Procedures of the No Action Alternative." Thus, in the present DEIS, BLM cannot cite to any change in circumstances that would make the additional leasing in the Northeast NPRA any more reasonable to consider than it was in 1998.

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The President, as part of his national energy policy, has directed BLM to consider additional leasing in the Northeast NPRA. BLM has not been directed to undertake such leasing, nor should it. Some of the key subsistence mitigation measures associated with the 1998 ROD rest on consultation with our communities, information sharing, and the development of mutually acceptable operating practices. For these mitigation measures and the required "multiple use" of the NPRA to have a chance to work, it is crucial that our communities be able to develop a relationship of mutual trust and respect with BLM and with the NPRA lessees.

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The AEWC has worked for twenty years with the National Marine Fisheries Service (NMFS) and numerous outer continental shelf (OCS) oil and gas operators, developing and refining mitigation measures to enable those operators to conduct business in the Beaufort Sea OCS during the open water season while ensuring that our bowhead whale subsistence hunters have the opportunity to take whales during the fall migration. We believe that we have achieved remarkable success with an undertaking that, at the outset, appeared doomed to failure. We attribute the major portion of this success to the fact that we have been able to develop a relationship of relative trust and mutual respect with the regulatory agency (NMFS) and with the long-term OCS operators. This relationship has enabled the OCS stakeholders to negotiate mutually acceptable

mitigation measures and to develop a close working relationship that even allows for a cooperative “micro-management” of activities during critical times for our bowhead subsistence harvest.

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Government

The current DEIS Alternatives B and C would overturn vital components of the agreement between our communities and the BLM, upon which the 1998 Decision rests, especially with respect to critical wildlife habitat. If it were to adopt this alternative, BLM would commit a devastating breach of trust with our communities before the stakeholders have had the opportunity to begin to implement the 1998 mitigation measures, thus dooming these critical measures to certain failure before they are even tested. Under this scenario, BLM will have little hope of meeting its congressional directive to accomplish “multiple use” in the NPRA. Thus, having fulfilled its Executive directive to consider additional leasing in NPRA, the rational determination for BLM to make is that, at this time, additional leasing in the Northeast NPRA is not within the scope of BLM's statutory authority.

B. Far From Supporting a Decision to Open Additional Areas of the Northeast NPRA to Leasing, the DEIS Supports the Adoption of Alternative A with an Expansion of BLM's Mitigation Measures Under the 1998 Decision.

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In both the current DEIS and the 1998 IAP/EIS, BLM failed to adequately address the adverse impacts to the bowhead subsistence hunt that are certain to occur with onshore oil and gas development in the NPRA. In fact in Section 4.3.12.2 of the DEIS, BLM concludes that “the No Action Alternative would not likely affect marine mammals.” This is a shocking conclusion that is directly contradicted by numerous findings of the current environmental analysis – e.g., “summer barge traffic, which would transport equipment and supplies to staging areas along the coast . . . would likely occur in offshore waters of the Planning Area from mid-July through October” (coinciding with the bowhead migration, DEIS Section 4.3.8.2, p. 4-101); “under the cumulative case, bowhead whales could be exposed to increased disturbance” (DEIS Section 4.6.9.10, p. 4-394); “disturbance from noise produced by marine vessel traffic supporting oil and gas activities in the Planning Area could be unavoidable . . . increased barge traffic associated with development could also displace migrating whales” (DEIS Section 4.7.10, p. 4-422). Numerous other examples are available in the DEIS.

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Support for this “no impact” conclusion is further eroded by a direct review of relevant literature, which makes it clear that increases in vessel traffic during the Beaufort Sea open water season, in the absence of appropriate mitigation, in fact will adversely affect bowhead whales and our bowhead subsistence hunt. Changes in bowhead whale behavior and deflections to their migratory routes from shipping noise, offshore drilling, and seismic vessels is well documented in the scientific literature as summarized in Richardson et al. (1995). Richardson, W.J., C.R. Green, Jr., C.I. Malme, and D.H.

Thomson, 1995, Marine Mammals and Noise, Academic Press, New York. The authors conclude that “in general, bowheads react strongly and rather consistently to approaching vessels of a wide variety of types and sizes.”

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Mammals

Richardson et al. (2003) reported a statistically significant displacement of bowhead whales from Northstar Island when exposed to low intensity sounds from relatively small vessels working near the drilling island. Richardson and Thomson, 2003, “Monitoring of industrial sounds, seals, and bowhead whales near British Petroleum’s (BP’s) Northstar oil development, Alaskan Beaufort Sea, 1999-2003.” Draft report submitted to BP Exploration, Anchorage, AK and National Marine Fisheries Service, Anchorage, AK. They noted that the “southern edge of the migration corridor was slightly farther offshore at the noisiest times as compared with typical times.” Displacements on the order of 1.4 to 2.1 miles in 2001, and 1.4-2.9 miles in 2002 were detected. The main sound source was from the small vessels in the area and not the drilling activities on the island itself. Should shipping increase along the Beaufort Coast associated with NPRA development, even subtle effects on bowhead migratory behavior such as these could lead to a decrease in whale hunting success in the fall hunting communities of Barrow, Nuiqsut, and Kaktovik.

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In addition, the tendency for bowheads to migrate closer to shore in light ice years, compared with heavy ice years, in the mid-Beaufort Sea during autumn has been demonstrated in at least two publications. Moore, S.E. 2000, *Variability of Cetacean distribution and habitat selection in the Alaskan Arctic*. Autumn 1982-91., “Arctic,” 53(4), pp. 448-460; Richardson and Thomson, 2003, *supra*. In Richardson and Thomson (2003), the authors noted that the bowhead migration was strongly distributed near shore in 2003. They estimated that roughly 75% of the population (e.g., ~7,800 bowheads) came within about 27 km (17 mi) of North Star Island in fall 2003. Sea ice retreat over the last decade in the Beaufort Sea coupled with the behavioral response of bowheads to sea ice (i.e., closer to shore in light ice years) could lead to much higher exposure to nearshore shipping traffic and noise. These factors clearly will increase the interactions between migrating bowhead whales and vessel traffic.

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It is important to note, in this regard, that while the bowhead migration was unusually close to shore at Northstar in 2003, it was unusually far offshore when it reached Barrow. Virtually all whales sighted by Barrow crews were 20 or more miles from shore, as compared with their typical average distance of approximately 10 miles from shore. Barge traffic, some of it associated with NPRA, was unusually heavy between Northstar and Barrow late in the 2003 open water season, raising the possibility that the combined effects of noise at Northstar and NPRA-related vessel noise from late-season barging operations to the west of Northstar could have been associated with a deflection of the migration in that year.

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BLM does note that vessel traffic-related impacts to bowhead whales “could be mitigated by limiting vessel traffic during migration periods.” In its “Unavoidable Adverse Effects” analysis, (p. 4-422). The AEWG agrees with this assessment.

However, as currently drafted the Stipulations and ROPs for the 1998 Decision are not adequate to ensure that this type of mitigation measure will be implemented.

Therefore, the AEWC strongly encourages BLM to work with the AEWC to develop stipulations that explicitly address open water season vessel traffic associated with oil and gas development in the NPRA.

II. FAILURE TO ADOPT ALTERNATIVE A WOULD VIOLATE FEDERAL LAW AND POLICY

The Congress has directed the Secretary of the Interior and the Bureau of Land Management to manage the nation's public lands in accordance with existing federal law, with specific reference to the protection and preservation of subsistence uses on public lands and to federal laws relating to migratory birds and endangered or threatened species, and pursuant to specific policy directives. BLM's failure to adopt Alternative A at this time would violate these laws and policies. Furthermore, the analysis set forth in the current DEIS makes it clear that continued leasing, exploration, development, and production activity under the existing Northeast NPRA IAP/EIS will place the Secretary and the BLM in violation of Federal law and policy unless additional mitigation measures to protect wildlife and subsistence hunting are developed.

A. Failure To Adopt Alternative A Would Place the BLM In Violation of Its Statutory Responsibilities Regarding the Management of Public Lands in Alaska.

1. By its own analysis in the current DEIS, BLM has not met the requirements of ANILCA and FLPMA with respect to leasing under the 1998 Northeast NPRA Decision.

In its analysis, in the current DEIS, of the impacts of Alternative A, BLM notes numerous, potentially severe adverse effects to wildlife under this alternative. See eg., Section 4.3.7.1, potential impacts to freshwater, anadromous, and amphidromous fish include loss of overwintering habitat, degradation or blockage of migratory corridors or feeding grounds; Section 4.3.9.1, permanent loss of terrestrial mammal habitat, reduced productivity of the Teshekpuk Lake caribou herd; Section 4.3.10.4, permanent loss of habitat for endangered spectacled and Steller's eiders; 4.8.12, development along the coast could change the distribution of caribou in the summer, when the greatest numbers are harvested; 4.8.13, habitat destruction would locally reduce or displace subsistence species; 4.9.9.1, it is likely that impacts on wildlife and habitat will lead to permanent irreversible losses of caribou and other terrestrial mammals.

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Furthermore, BLM admits that leasing under Alternative A in fact could threaten the subsistence way of life of North Slope Native communities. See DEIS Section 4.3.13.4. To address these impacts, BLM relies on “rigorous management and safety practices, planning requirements, and adherence to federal and state operational guidelines, procedures, and stipulations, including those specifically targeted for the Planning Area.” DEIS, p. 4-88. Yet, by its own admission, BLM is not in a position to evaluate the effectiveness of these mitigation measures. DEIS Section 4.3.13.3 “Effectiveness of Stipulations and Required Operating Procedures of the No Action Alternative.”

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ANILCA

Since BLM is unable to demonstrate the effectiveness of mitigation measures necessary to bring NPRA leasing within the parameters of ANILCA and FLPMA, the agency is not in a position to recommend an expansion of industrial activities in the Northeast NPRA.

2. The mitigation measures adopted as part of the 1998 Northeast NPRA ROD are not adequate to meet the requirements of ANILCA and FLPMA.

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BLM is responsible for managing the nation’s public lands “on the basis of multiple use and sustained yield”, as well as in a manner that “will protect the quality of . . . scenic, historical, ecological, [and] environmental values”, that will “provide food and habitat for fish and wildlife”, and that will “provide for outdoor recreation and human occupancy and use.” 43 USC 1701 (7), (8), 1732(a) (2003).

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Furthermore, BLM must give priority to subsistence use on Alaska’s public lands. 16 USC 3111, 3114 (2000). In ANILCA, Congress expressly stated its intent that in land use decisions the BLM must give priority to rural Alaskans, like the Native subsistence communities of the North Slope, who are dependent on fish and wildlife for food and other supplies. Congress reinforced its intent to protect and preserve subsistence uses by setting specific bounds on the range of BLM’s discretion to limit subsistence uses on public lands in Alaska. Any such decision must be “consistent with sound management principles” and must include “reasonable steps . . . to minimize adverse impacts upon subsistence uses and resources.” 16 U.S.C. 3120(a) (2000).

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Congress set these limitations on BLM’s authority in explicit recognition of the fact that people in rural Alaska have “no practical alternative means” to obtain food and other supplies if their subsistence resources are lost. 16 USC 3111(2) (2000). Thus, Congress tasked BLM with ensuring that rural Alaskans dependent upon subsistence for their livelihood will be able to continue their subsistence activities in a way that maintains their livelihood if BLM permits alternate uses, such as oil and gas development, on lands used for subsistence.

- a. *BLM has not adequately accounted for the offshore impacts of its onshore leasing program.*

As already noted in these comments, BLM, in its 1998 ROD disregarded the adverse impacts to our communities' critical bowhead subsistence hunt, including vital interactions between the caribou and bowhead hunts, and the need for consultation and coordination with the AEWC.¹ In general, BLM has given little or no weight to the potentially devastating impacts that can result from the cumulative effects of OCS oil and gas development and the offshore components of NPRA development. This is a glaring omission of the 1998 Decision and one that BLM must rectify before it can adequately consider additional Northeast NPRA leasing.

- c. *BLM has not established that adverse impacts to subsistence resources can be minimized, as required by Section 810 of ANILCA.*

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In its ANILCA §810 analysis for the 1998 Decision, BLM concluded that under the cumulative case, leasing in the Northeast NPRA pursuant to what is now Alternative A would result in significant restrictions to subsistence uses. BLM attempted to rationalize its decision to go forward with leasing at that time on two principal grounds.

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First, the agency argued that “even if BLM were to adopt the [1998] no-action alternative, the cumulative impacts on surrounding lands still would reach the may-significantly-restrict threshold under ANILCA §810.” BLM thus concluded that the additional impacts brought about by its proposal for leasing in the Northeast NPRA were “necessary” since they would be minimal when compared with impacts already accruing. (1998 Northeast NPRA ROD “ANILCA Section 810 Summary,” p. 2, section 1.)

In making this argument BLM does not even attempt to address the tests created by Congress in ANILCA and FLPMA. Rather, it proposes a tortured and self-serving rationalization, saying in effect that “the damage will occur anyway” so adding to it is justified. This is a complete misapplication of the cumulative effects analysis, leading to a result that is in direct contravention of the purposes for which that analysis was created. Moreover, in making this rationalization, BLM conveniently fails to note that the “impacts on surrounding lands” are due in major part to actions by BLM and its sister agency at the Department of the Interior, MMS. Taking this amazingly arrogant proposition to its logical conclusion, BLM would interpret the congressional directives of ANILCA as saying that the agency can justify an action threatening significant

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¹Caribou meat is the principal staple for bowhead subsistence hunters who must spend weeks at their ice camps during the bowhead migration and hunting seasons. In addition, the sinew from the caribou leg is the only material that can be used to sew the *umiaq* used in spring bowhead whaling. People have tried using synthetic materials, but they do not have the strength and suppleness of caribou sinew and can cause boats to develop leaks.

impacts to subsistence on the grounds that the agency has already allowed such impacts to occur.

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ANILCA

The second basis on which BLM sought to justify its Decision in 1998, and the only one on which the 1998 Decision in fact can be justified, consistent with federal law, is the promise of extensive mitigation measures including prohibitions and restrictions on oil and gas activities, and provisions for extensive consultation with the local communities. As pointed out by BLM in the current DEIS and noted earlier in these comments, sufficient time has not passed for these mitigation measures to be developed and implemented so that the affected parties can see whether they will be sufficient to minimize impacts to our subsistence uses of the NPRA, as guaranteed by ANILCA and FLPMA.

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ANILCA

Thus, the timing of a decision to increase leasing in the Northeast NPRA is premature. Furthermore, as discussed, it is vital to the success of BLM's proposed mitigation measures that the agency show itself to be a trustworthy steward of public lands, and an expansion of leasing at this time would demonstrate the precise opposite. Taken together, these factors virtually guarantee that a decision by BLM to go forward with additional leasing at this time will result in severe adverse impacts to our communities' subsistence uses of the public lands and renewable resources of the Northeast NPRA. Such a decision therefore will place BLM in violation of its responsibilities for protecting and preserving subsistence uses in the NPRA, as directed in FLPMA and ANILCA.

3. BLM cannot even begin to evaluate the extent of impacts from oil and gas development in the Northeast NPRA without first undertaking substantial research and coordination, as recommended by the NRC Committee.

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Given its responsibility for managing the NPRA in a manner that permits subsistence and oil and gas development to thrive in close proximity, BLM must make its management decisions on the basis of scientific research. In particular, if BLM is to oversee the expansion of oil and gas development in the NPRA in a manner consistent with federal environmental and regulatory statutes, it must be able to assess the cumulative effects of all activities in northern Alaska potentially having an adverse effect on subsistence uses. However, the knowledge base for making these assessments is not available, as noted by Congress in 1999 when it asked the National Research Council to review the state of current knowledge and to make recommendations regarding the information needed to support an integrated, comprehensive analysis of cumulative impacts associated with North Slope oil and gas development. See U.S. Congress: Conf. Rept 106-379 (H.R. 2684) Fiscal Year 2000 Appropriations for the Environmental Protection Agency.

In its 2003 report, the National Research Council Committee on Cumulative Environmental Effects of Oil and Gas Activities on Alaska's North Slope (NRC Report or Report, NRC Committee or Committee) found that "the effects of North Slope

42

industrial development on the physical and biotic environments and on the human societies that live there have accumulated, despite considerable efforts by the petroleum industry and regulatory agencies to minimize them.” NRC Report, p.10. The Committee found further that “continued expansion is certain to exacerbate some existing effects and to generate new ones – possibly calling for regulatory revisions.” *Id.*, p. 11. The Committee went on to advise Congress that “if wise decisions are to be made, the nature and extent of undesirable effects likely to accompany future activities must be fully acknowledged and incorporated into regulatory strategies and decision-making. This is precisely the type of decision-making Congress anticipated being applied in the NPRA when it made its 1999 research directive.

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In its Report, the NRC Committee identified numerous gaps in data that are fundamental to the evaluation of the interaction between subsistence use and oil and gas development in the NPRA. The following are a sample of the extensive knowledge gaps noted by the NRC Committee:

- available data are inadequate regarding the full effects of industrial noise . . . on fall migrating bowhead whales, NRC Report p. 102;
- because of a lack of information it is not possible to determine whether biota associated with North Slope lakes are protected by regulations that cap water withdrawal from lakes, *Id.*, p. 129;
- large-scale industrial development could harm widely distributed fish, such as grayling, arctic cisco, broad whitefish, and other species in other areas, by interfering with their migration patterns or their overwintering habitat, *Id.*, p. 130;
- no studies were found that demonstrate quantitatively whether spatial redistributions alter the sustainable equilibrium harvest or change the time it takes to harvest caribou or bowhead whales, *Id.*, p. 144;
- a sample of time series emission data coupled with a diffusion model would help to establish where and how much air pollution North Slope residents are exposed to, *Id.*;
- there is no integrated, North Slope-wide framework for wildland evaluation, mapping, ranking, planning, and analysis of effects, *Id.*, p. 148;
- there has been a steady erosion of wild-land values over a vast area through a series of individual, project-by-project decisions by different state and federal government agencies, *Id.*;
- human-health effects, including physical, psychological, cultural, spiritual, and social, have not been adequately addressed or studied, *Id.*;

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With respect to the physical health effects experienced by North Slope Native people in the face of oil and gas development that has already occurred, the NRC Committee found that a “higher consumption of nonsubsistence food . . . [has] increased the incidence of diabetes.” *Id.*, p. 139. This underscores the fact that for Native people, accustomed to a subsistence diet, the continuation of subsistence uses in the NPRA is essential not only for cultural survival, but for sheer physical survival as well.

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To address the critical data gaps that it identified and to support the congressional mandate to protect and preserve the existing subsistence uses of the NPRA, the NRC Committee recommended two actions. First, the Committee recommended the development of a “comprehensive slope-wide land-use plan to guide industrial development and assist in planning for the eventual departure of the oil and gas industry from the region.” *Id.*, p. 151. In response to this recommendation, the North Slope Borough has undertaken the revision of its comprehensive plan, with the intent of creating mutually compatible land use directives for subsistence and oil and gas development. The ultimate success of this plan, however, will depend upon the willingness of the U.S. Department of the Interior and state agencies to cooperate and coordinate with the Borough in the implementation of the comprehensive plan.

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Second, the Committee recommended the development and implementation of a “coordinated and comprehensive research plan” for the identification, evaluation, and tracking of key indicators of human and environmental health on the North Slope. See *Id.*, p. 151. Again, as the NRC Committee noted, the success of such a plan hinges, in large part, on the ability of government agencies to **work with** the local subsistence communities. In particular, the Committee recommended that

to increase the likelihood that the research would be of the broadest usefulness in decision making and to have the greatest scientific validity . . . traditional and local knowledge, especially information gathered by subsistence hunter, should be incorporated into the research plan at all stages of research, from study design through interpretation and presentation of the results.

Id.

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To ensure the ultimate quality and reliability of the science on which oil and gas development decisions are based, the Committee went on to recommend that “thorough, independent peer review should be conducted at all stages of the research, from study design to publication of results.” *Id.* Furthermore, recognizing the need to protect subsistence activities, the Committee recommended that “social costs should play central role in decision; slope-wide, jurisdictionally coordinated framework for wild-land evaluation . . . needed.” *Id.*, p. 148.

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Congress has set BLM a daunting, but not impossible task in directing the agency to foster the co-existence of subsistence uses and oil and gas development in the NPRA. However, the Congress also has provided BLM with high quality, science based guidance in the NRC Report. Following the recommendations of this Report should enable BLM to meet its statutory obligations as set forth in ANILCA and FLPMA. Failure to follow the recommendations will create substantial risk of failure in meeting those obligations.

Finally, for purposes of the present determination, it is clear that the information available to BLM for making a decision to increase the area of the Northeast NPRA open to oil and gas leasing is profoundly inadequate. Therefore, the only responsible course for BLM at this time, consistent with federal law, is to defer any decision regarding increased leasing in the Northeast NPRA until such time as the structure and information necessary to support the decision are in place.

B. Implementation of the Preferred Alternative Would Violate the BLM's Responsibilities under Executive Order 12898.

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Executive Order 12898 gives specific recognition to the relative lack of political power of minority populations, and instructs federal agencies to address this imbalance in its decision-making processes. With respect to oil and gas development in the NPRA, BLM has correctly identified "subsistence effects" as the "primary measure of disproportionate effects." DEIS Section 4.3.14.1., p. 4-147. As with its responsibility for meeting the statutory planning standards of ANILCA and FLPMA, BLM, to meet the Executive standard of environmental justice must rely heavily on measures designed to mitigate the adverse effects of oil and gas development on subsistence resources and uses. The mitigation measures primarily available to BLM at this time are those developed as part of the 1998 ROD.

As BLM itself has pointed out, and as discussed elsewhere in these comments, the reliability of these mitigation measures has yet to be established. Therefore, BLM cannot be assured of meeting its responsibilities regarding environmental justice anymore than it can be assured of meeting its planning responsibilities under FLPMA and ANILCA with respect to current leasing in the Northeast NPRA. Opening the additional areas of the Northeast NPRA that BLM would propose for leasing under Alternatives B or C of the DEIS would seriously exacerbate already severe environmental justice issues by subjecting the most sensitive subsistence resource use areas to the adverse effects of oil and gas leasing. Such an action by BLM would represent blatant disregard for the principles of environmental justice.

C. Failure To Adopt Alternative A Will Place BLM at Substantial Risk of Violation of the Endangered Species Act

52

Pursuant to the Endangered Species Act (ESA), BLM is responsible for ensuring that any take of an endangered or threatened species, incidental to activities authorized by BLM, will have a minimal effect on the long-term survival and recovery of that species. Congress has reinforced the BLM's responsibility for protecting endangered and threatened species during planning. See 43 USC 1732(b), "nothing in this Act shall modify or change any provision of Federal law relating to migratory birds or to endangered or threatened species." On the North Slope BLM must be concerned, in particular, about impacts to bowhead whales and spectacled and Steller's eiders.

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Marine
Mammals

BLM attempts to dismiss potential adverse impacts of bowhead whales and their habitat, especially in the cumulative case, by pointing out that the bowhead population appears to have been increasing in recent years. Far from using apparent population health as a basis for dismissing bowheads from the discussion of impacts to endangered species, BLM should be looking at factors likely to be contributing to this recovery and developing mitigation measures to ensure that such factors continue in effect.

054
Marine
Mammals

As discussed previously in these comments, increasing vessel traffic in the Beaufort Sea poses risks to bowhead whales. The most immediate risks are associated with vessel noise. However, if vessel traffic is permitted to multiply, unregulated, in the Beaufort, collisions with and strikes from vessels could well become a serious hazard for these whales and a threat to the population's continued recovery. The dire circumstances of North Atlantic right whales presents a graphic and tragic example of the ravages vessel traffic can cause to right whale populations, including bowhead whales. See Knowlton, A.R., and Kraus, S.D. 2001. *Mortality and serious injury of northern right whales (Eubalaena glacialis) in the western North Atlantic Ocean*. In: "Right whales: Worldwide Status." Best, P.B., Bannister, J.L., Brownell, R.L., Jr., Donovan, G.P. Eds. *J. Cetacean Res. Manage. Special Issue 2*. Cambridge, p. 309; Kraus, S.D., Hamilton, P.K., Kenney, R.D., Knowlton, A.R., and Slay, C.K. 2001. *Reproductive parameters of the North Atlantic right whale*. In: "Right whales: Worldwide Status." Best, P.B., Bannister, J.L., Brownell, R.L., Jr., Donovan, G.P. Eds. *J. Cetacean Res. Manage. Special Issue 2*. Cambridge, p. 309.

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Stips &
ROPs

Thus, it is incumbent upon BLM to take all steps necessary to ensure that vessel traffic associated with NPRA leasing is carefully regulated and that all potential impacts are clearly mitigated.

056
Stips &
ROPs

Similarly, BLM must carefully implement and evaluate the effectiveness of its mitigation measures for spectacled and Stellar's eiders before it can begin to consider making additional areas of the Northeast NPRA available for oil and gas leasing.

CONCLUSION

057
Stips &
ROPs

Based on its own analysis, BLM is not in a position to recommend the opening of additional areas of the Northeast NPRA to oil and gas development. At this time, BLM's focus should be on working with the AEWC, the North Slope Borough, and state and federal agencies to develop, implement, and evaluate mitigation measures necessary to ensure that development on NPRA lands currently subject to oil and gas leasing, in combination with OCS and state leases, does not unreasonably interfere with subsistence uses of the NPRA.